

Criminal Appeal No.981-SB of 1998.

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

...

Criminal Appeal No.981-SB of 1998.

Date of Decision: January 21, 2010.

Tapinderpal Singh and others ... Appellants

VERSUS

State of Punjab ...Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

CORAM :HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. Baldev Singh, Senior Advocate, with
Mr. Arshvinder Singh, Advocate,
for the appellants.

Mr. Vishal Munjal, Additional Advocate General, Punjab.

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MOHINDER PAL, J.

Impugned in this appeal is the judgment of conviction and the sentence order passed by the learned Sessions Judge, Ludhiana, convicting and sentencing the appellants under Section 498-A and 304-B of the Indian Penal Code (for short 'the Code'). For the former offences, the appellants were sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.500/-, each, in default whereof to undergo further rigorous imprisonment for one month and for the latter

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offence the appellants were sentenced to undergo rigorous imprisonment for seven years. The substantive sentences of imprisonment awarded to the appellants were ordered to run concurrently.

The instant case was registered at the instance of Kahan Singh, brother of Harbans Kaur (deceased). As per facts of the case, Harbans Kaur (deceased) was married to appellant Tapinderpal Singh on 18.2.1994. Sufficient dowry was given at the time of marriage by the parents of Harbans Kaur according to their status. Seven or eight days after the marriage, appellant Tapinderpal Singh, husband of Harbans Kaur, Avtar Singh, her father-in-law and Kartar Kaur, her mother-in-law started telling her that her parents had not given sufficient dowry. On this account, she was mal-treated and was asked to bring Rs.25,000/- from her parents. Harbans Kaur stated the fact of demand of dowry and ill-treatment by the accused on her visit to her parents prior to 'Lohri' festival. Kahan Singh, brother of Harbans Kaur, Gurcharan Singh, a cousin brother of Harbans Kaur and the mother of Harbans Kaur went to the house of the accused one day prior to the 'Lohri' and at that time Harbans Kaur stated that she was being subjected to ill-treatment on account of demand of dowry. Kahan Singh, Gurcharan Singh and the mother of Harbans Kaur told the accused that they were not in a position to pay the amount and that the same would be paid to the accused after harvesting the crop.

On 3.2.1995, complainant Kahan Singh along with

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Gurcharan Singh again went to meet Harbans Kaur in her matrimonial house. On reaching there, they came to know from the neighbours that Harbans Kaur had been taken to hospital at Sudhar. Then they went to the hospital and learnt that Harbans Kaur had died. Suspecting foul play, complainant Kahan Singh went to the police and got registered the instant case against the appellants.

After completion of investigation and due formalities, challan against the accused was presented before the Ilqa Magistrate, who committed the case to the Court of Session.

Charge under Sections 498-A and 304-B of the Code was framed against the accused, who did not plead guilty to the charge and claimed trial.

At the trial, the prosecution examined Draftsman Sukhwinder Singh (P.W.1), Dr. S.K. Gupta (P.W.2), complainant Kahan Singh (P.W.3), Gurcharan Singh (P.W.4), Sub Inspector Sikattar Singh (P.W.5), Assistant Sub Inspector Makhan Singh (P.W.6) and Constable Balbir Singh (P.W.7).

In his statement recorded under Section 313 of the Code of Criminal Procedure, accused-appellant Tapinderpal Singh, besides denying the prosecution allegations and pleading false implication, stated as under:-

“ The deceased was handsome and beautiful lady whereas I am simpleton, hard of speaking and physically disabled. She was

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not happy to marry with me and she used to remain in a sorrow mood and complained me that her parents have married her to a dung, which I tolerated. My father on coming to know about her condition, took her to Raikot hospital from where she was referred to Ludhiana hospital and in the way at Sudhar her condition deteriorated and she had to admit at Sudhar. I had cordial relations with my wife and at no stage demanded any dowry and it was sufficient that I was married with such a beautiful girl."

In their statements recorded under Section 313 of the Code of Criminal Procedure, appellants Avtar Singh and Kartar Kaur dittoed the statement of accused-appellant Tapinderpal Singh.

The accused, in defence, examined Dr.Swaran Singh Sandhu (D.W.1), Surjit Kaur (D.W.2) and Avtar Kaur (D.W.3).

I have heard the learned counsel for the parties and have gone through the records of the case.

At the outset, it may be mentioned here that keeping in view the evidence of the prosecution, its case against appellants Avtar Singh and Kartar Kaur is not free from doubt. In his statement made before the police by complainant Kahan Singh, brother of Harbans Kaur (deceased) leading to the registration of the instant case against the accused, no specific

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allegations have been made against appellants Avtar Singh and Kartar Kaur, who are parents of appellant Tapinderpal Singh. General allegations have been levelled against them i.e appellants Avtar Singh and Kartar Kaur, conveying that they were hand in glove with appellant Tapinderpal Singh in torturing Smt.Harbans Kaur on account of insufficiency of dowry. It is a tendency on the part of the family of the victim to rope in as many members of the family of the in-laws of the victim in a case like this as possible. Appellant Kartar Kaur was found innocent during investigation by the police and had not been challaned. She was summoned to face trial by the trial Court on an application moved by the prosecution under Section 319 of the Code of Criminal Procedure. Appellant Kartar Kaur is a teacher by profession and it appears that she had nothing to do with the demand of Rs.25,000/-. Harbans Kaur (deceased) was taken to hospital by appellant Avtar Singh on coming to know about her condition. Avtar Singh appellant had first taken Harbans Kaur to the clinic of Dr.Swaran Singh Sandhu (D.W.1) at Raikot. Dr. Swaran Singh Sandhu (D.W.1) had referred Harbans Kaur to C.M.C, Ludhiana as her condition was serious. Dr. Swaran Singh Sandhu (D.W.1), who was M.B.B.S, M.S (General Surgery) ex-P.C.M.S proved the slip/Certificate (Exhibit D.A) whereby Harbans Kaur was referred by him to C.M.C, Ludhiana. The role of appellant Tapinderpal Singh in the commission of the crime will be discussed in the later part of the judgment. However, keeping in view the facts and circumstances

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of the case, especially the fact that appellants Avtar Singh and Kartar Kaur had nothing to do with the demand of dowry, I am of the considered opinion that the case of the prosecution against them has not been proved beyond all reasonable doubts and they are entitled to be extended the benefit of doubt.

The question arises as to whether accused-appellant Tapinderpal Singh is liable for the offences under Section 498-A and Section 304-B of the Code for which offences he has been found guilty by the learned trial Judge. Section 304-B of the Code, for facility of reference, is reproduced hereunder:-

“ 304-B. **Dowry death.**- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death”.

As per the provisions of Section 304-B of the Code,

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the offence of "dowry death" consists of three ingredients i.e death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances; that the death occurs within seven years of her marriage; and that soon before her death, she was subjected to cruelty or harassment by her husband or his relatives for or in connection with any demand for dowry. If these three ingredients are there, the offence of "dowry death" can be said to be complete and proved.

In this case, admittedly Harbans Kaur had died within two months of marriage, as her marriage with appellant Tapinderpal Singh had taken place on 18.12.1994 and she died on 3.2.1995. Death of Harbans Kaur occurred otherwise than under normal circumstances. Dr. S.K. Gupta (P.W.2), who had conducted post mortem examination on the dead body of Harbans Kaur, after receipt of the report of the Chemical Examiner that Aluminium Phosphide was detected in the viscera, had declared the cause of death due to poison. The fact that soon before her death Harbans Kaur was subjected to cruelty or harassment by appellant Tapinderpal Singh for or in connection with any demand of dowry, is proved on record as is evident from the evidence led by the prosecution. Complainant Kahan Singh (P.W.3) and Gurcharan Singh (P.W.4) have deposed that Harbans Kaur (deceased) had been married with appellant Tapinder Singh on 18.12.1994. The evidence of Kahan Singh (P.W.3) and Gurcharan Singh (P.W.4) is consistent about their

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visits to the village of appellant Tapinderpal Singh. Appellant Tapinderpal Singh was running a Medical Store and had demanded Rs.25,000/- from the parents of the deceased in order to expand his business. The depositions of Kahan Singh (P.W.3) and Gurcharan Singh (P.W.4) establish without any doubt the case of the prosecution against appellant Tapinderpal Singh. Appellant Tapinderpal Singh, as observed above, in his statement recorded under Section 313 of the Code of Criminal Procedure, has taken the plea that the deceased was a beautiful lady whereas he was a simpleton, hard of speaking and physically disabled; that she was not happy to marry appellant Tapinderpal Singh and that she used to remain in a sorrow mood. However, before the marriage of Harbans Kaur with appellant Tapinderpal Singh, all these facts must have been brought to the notice of the parents of Harbans Kaur by the persons who had acted as intermediaries in arranging this marriage, but at no stage Harbans Kaur or her parents raised any objection. Ranbir Singh Sarpanch (D.W.4) has disclosed the names of persons who had acted as intermediaries in arranging this marriage and they are Jagdev Singh, Harbans Singh and Gian Singh of Village Talwandi. None of these persons has been examined by appellant Tapinderpal Singh. They were the best persons who could throw light upon the circumstances whether it was a forced marriage or whether the facts of appellant Tapinderpal Singh being stammering and simpleton were brought to the notice of Harbans Kaur and her parents prior to the marriage. Three photographs of appellant

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Tapinderpal Singh with deceased Harbans Kaur taken on the occasion of marriage are on record. One photograph depicts the occasion of ring ceremony where the bride is putting ring on the ring finger of the bridegroom. These photographs do not indicate that it was a forced marriage. The defence taken by appellant Tapinderpal Singh in this regard is an afterthought. The life of Harbans Kaur came to an end by consuming some poisonous substance within two months of her marriage, which shows the magnitude of the harassment meted out to her by appellant Tapinderpal Singh. The above discussed evidence clearly establishes that soon before Harbans Kaur ended her life, she was subjected to cruelty by accused-appellant Tapinderpal Singh on account of demand of dowry. So, the third ingredient of the offence of "dowry death" i.e whether the deceased was subjected to cruelty or harassment soon before her death for or in connection with dowry demands by accused-appellant Tapinderpal Singh, stands proved from the evidence on record.

For the aforesaid reasons, the prosecution has been able to prove its case against accused-appellant Tapinderpal Singh under Section 304-B and 498-A of the Code. The impugned judgment of conviction recorded by the trial Court in respect of appellant Tapinderpal Singh is, therefore, upheld. The sentence imposed upon appellant Ram Sarup also commensurates with the offence committed by him. The impugned sentence order qua appellant Tapinderpal Singh is also, accordingly, upheld.

The net result is that this appeal qua appellants

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Avtar Singh and Kartar Kaur is accepted, the impugned judgment of conviction and the sentence order qua them are set aside and they are acquitted of the charge framed against them by giving them the benefit of doubt. However, this appeal qua appellant Tapinderpal Singh is dismissed.

January 21, 2010.
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**(MOHINDER PAL)
JUDGE**